United Nations CAT/C/ESP/CO/6*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the sixth periodic report of Spain**

1. The Committee against Torture considered the sixth periodic report of Spain (CAT/C/ESP/6) at its 1302nd and 1305th meetings, held on 28 and 29 April 2015 (CAT/C/SR.1302 and 1305), and adopted the following concluding observations at its 1328th meeting, held on 15 May 2015.

Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as this allows for a more focused dialogue between the State party and the Committee.

3. The Committee welcomes the interactive dialogue held with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

Positive aspects

4. The Committee notes with satisfaction that the State party has ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 3 June 2013;

(b) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 23 September 2010;

(c) Council of Europe Convention on preventing and combating violence against women and domestic violence, on 1 August 2014;

(d) Council of Europe Convention on Action against Trafficking in Human Beings, on 10 September 2010.

5. The Committee welcomes the fact that the State party has taken the following legislative measures in areas related to the Convention:

(a) Act No. 4/2015 of 27 April on the Legal Status of Victims of Crime;

* Reissued for technical reasons on 24 August 2015.

** Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

(b) Royal Decree No. 162/2014 of 14 March on the operation and internal regulations of migrant detention centres.

6. The Committee also commends the State party's efforts to adjust its policies and procedures in order to afford greater protection for human rights and to apply the Convention, in particular:

(a) The adoption of the 2013–2016 National Strategy for the Elimination of Violence against Women;

(b) The adoption of Directorate General of Police Circular No. 2/2012 of 16 May as part of the general strategy to combat racism;

(c) The adoption of the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and related Intolerance in November 2011;

(d) The adoption of the Framework Protocol for the Protection of Victims of Trafficking in October 2011;

(e) The adoption of the basic operating protocol for centres or homes for minors diagnosed with behavioural disorders, in 2010;

(f) The development of the National Human Rights Plan computer application, which began operating in 2010 and collects the latest data on police action that might constitute abuse of authority or violations of the rights of persons in police custody.

7. The Committee also takes note of the information provided by the State party regarding the possibility of direct application of the provisions of the Convention and cases in which those provisions have already been directly invoked in the domestic courts of the State party.

Principal matters of concern and recommendations

Definition and criminalization of torture

8. Though it takes note of the explanations provided by the delegation, the Committee is concerned that the Criminal Code still does not fully reflect the definition contained in article 1 of the Convention and that no changes have been made to the penalties for torture, which under article 174 of the Criminal Code is punishable by 2 to 6 years' imprisonment for a serious offence and 1 to 3 years otherwise (arts. 1 and 4).

The Committee reiterates its previous recommendations (CAT/C/ESP/CO/5, paras. 7 and 8) and urges the State party to consider harmonizing the content of article 174 of the Criminal Code with article 1 of the Convention. The State party should also ensure that crimes of torture are subject to appropriate penalties that take into account its grave nature, as provided in article 4, paragraph 2, of the Convention.

Non-applicability of statute of limitations to torture

9. The Committee is concerned that the statute of limitations continues to apply to the crime of torture under article 174 of the Criminal Code, although it appreciates the fact that it does not apply in cases where torture constitutes a crime against humanity (arts. 1, 4 and 12).

The Committee reiterates its previous recommendation (CAT/C/ESP/CO/5, para. 22) and urges the State party to ensure that acts of torture are not subject to any statute of limitations.

Incommunicado detention and fundamental legal safeguards

10. The Committee takes note of the statements by the State party to the effect that incommunicado detention is an exceptional regime that requires court authorization a reasoned decision in writing in every case, and direct continuous monitoring of the individual prisoner's situation by the court. The Committee appreciates the fact that there has been a sharp decline in the use of this form of detention. It is also interested to note that there is a bill to amend the Criminal Procedure Act that will also regulate incommunicado detention. However, in spite of all that, the Committee remains deeply concerned at the maintenance of incommunicado detention for up to 13 days for crimes of terrorism or crimes committed by an armed gang, and the impairment that that entails of the fundamental legal safeguards afforded to persons deprived of their liberty (arts. 2 and 16).

Referring to its previous concluding observations (CAT/C/ESP/CO/5, para. 12), the Committee reiterates its recommendation that the State party review the incommunicado detention regime with a view to abolition, and that it ensure that all persons deprived of their liberty, particularly children, enjoy fundamental legal safeguards from the moment of arrest. The State party should guarantee the right of all detainees to have the assistance of counsel and to communicate in confidence with their legal representative; to contact family members or other persons of their choice, who should be informed of their place of detention; and to be promptly examined by an independent doctor. The State party should also ensure that the amended Criminal Procedure Act does not place any restrictions, even discretionary ones, on the rights of persons deprived of their liberty.

Audiovisual recording

11. The Committee welcomes the fact that the court may order the recording of interviews for use as evidence in criminal proceedings, but is concerned that video surveillance systems are not yet in place in all police stations and places of detention. It is also concerned at reports that, in places of detention where a video surveillance system is in place, police procedures are not always recorded (arts. 2 and 16).

The State party should ensure the audiovisual recording of all procedures in police stations and places of detention involving persons deprived of their liberty, including those in incommunicado detention, except in cases where it might violate the right to privacy or detainees' right to confidential consultation with their lawyer or doctor. Such recordings should be kept in secure facilities and be made available to investigators, detainees and their lawyers.

Diplomatic assurances

12. The Committee takes note of the information from the State party to the effect that, if in adjudicating an extradition case there are substantial grounds for believing that a person may be in danger of being subjected to torture if extradition is granted, the person will not be handed over. However, the Committee is concerned at reports of extradition and expulsion of foreigners to other countries even where there is a real and foreseeable risk of them being subjected to torture or ill treatment, at times relying on diplomatic guarantees. The Committee is particularly concerned that the State party accepted diplomatic assurances in the cases of Alexandr Pavlov, though he was ultimately granted asylum in Spain, and Ali Aarrass, who was handed over to the Moroccan authorities in 2010, despite there being a risk of torture if he was returned and the fact that the Human Rights Committee had requested interim measures of protection (see CCPR/C/111/D/2008/2010, para. 8.1). In the latter case the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment followed up on these reports during his visit to Morocco in 2012 (A/HRC/25/74, p. 64) (arts. 3, 6 and 7).

The Committee reminds the State party that it must ensure that no one is expelled, returned or extradited to another State when there are substantial grounds for believing that the person would run a personal and foreseeable risk of being subjected to torture. In addition, the State party should refrain from seeking or accepting diplomatic assurances as a safeguard against torture or ill treatment in such cases. The Committee points out that the torture reported by Ali Aarrass may constitute a violation of the provisions of the Convention, and calls for proper investigations.

Non-refoulement

13. The Committee is seriously concerned at the practice of summary forced return — known as "hot expulsion" — from the autonomous cities of Ceuta and Melilla, carried out with no prior risk assessment and preventing access to the refugee status determination procedure. In that regard, it notes with concern that the first final provision of the Public Security Act, adopted in March 2015, amends the Aliens Act to put a veneer of legality on such summary expulsion, in the form of the new legal concept of "rejection at the border" (art. 3).

The Committee urges the State party to revise its immigration and asylum legislation to give unconditional effect to the right of non-refoulement, in accordance with article 3 of the Convention, and to take all necessary measures to fully observe that right in all circumstances. It should also ensure proper evaluation of each individual case, including the identification of possible victims of torture, and guarantee to all persons in need of international protection access to asylum procedures, including refugee status determination.

Obligation to extradite or prosecute (*aut dedere aut judicare*)

14. The Committee notes with concern that extradition requests from the Argentine Government in respect of persons, including several former ministers, suspected of crimes of torture under the Franco regime have been denied by the State party on the grounds that the acts of which they are accused do not constitute crimes against humanity and are therefore subject to the statute of limitations. In this regard, the Committee is concerned that this situation may give rise to impunity in those cases where the State party does not investigate the alleged crimes, as well as constituting a violation of the Convention (arts. 5 and 7).

The Committee reminds the State party that, in order to avoid impunity, it must apply the principle of *aut dedere aut judicare* when the alleged perpetrator of acts of torture is in its territory, in accordance with article 5, paragraph 2, of the Convention. The Committee also reiterates that the investigation and prosecution of acts of torture should not be constrained by the application of the statute of limitations.

Amnesty

15. The Committee notes with grave concern that the 1977 Amnesty Act remains in force. The Committee is also concerned that the Supreme Court has found that criminal investigation into serious human rights violations committed during the Civil War and the Franco regime (1936–1975) is not warranted, in part because such offences are covered by the statute of limitations or the alleged perpetrators are deceased or are covered by the 1977 Amnesty Act (arts. 12, 13 and 14).

The Committee urges the State party to take all necessary legislative and other measures to ensure that crimes of torture, including enforced disappearance, are not subject to amnesty or a term of limitation, and that this rule is scrupulously observed in practice. The State party should also ensure that victims of torture or ill treatment

receive adequate redress and compensation, and the fullest possible rehabilitation. The Committee also recalls that enforced disappearance is a continuing offence and a continuing violation of human rights until the fate or whereabouts of the victim has been ascertained.

Temporary migrant holding centres

16. While welcoming the overhaul of temporary migrant centres to cater for the dramatic increase in the number of arrivals since mid-2014, the Committee is concerned about the continuing high level of overcrowding in the centres and the appalling condition of the facilities, which in the Committee's view pose a threat to the safety and physical and psychological integrity of those housed there. The Committee appreciates the information from the delegation to the effect that the centres have been visited by several NGOs and international human rights bodies since 2014. Nevertheless, on at least one occasion an international NGO has apparently been denied access, though it was suggested that it request another visit at a later date (art. 11).

As a matter of urgency the State party should step up its efforts to reduce overcrowding in temporary migrant holding centres and take all necessary measures to improve the material condition of the facilities there, particularly those designed for people with special needs such as single women and women with children. It should also ensure the physical and psychological integrity of all individuals in those centres. The Committee also encourages the State party to facilitate oversight activities by NGOs in the centres.

Solitary confinement

17. The Committee takes note of the information provided by the State party during the dialogue, to the effect that prolonged solitary confinement requires judicial authorization and strict monitoring by medical personnel. The State party also informed the Committee that solitary confinement is applied only after three very serious disciplinary offences. Nevertheless the Committee is concerned that prisoners may be placed in solitary confinement for up to 42 days at a stretch. The Committee draws the State party's attention to the fact that excessive use of solitary confinement constitutes cruel, inhuman or degrading punishment or even torture in some cases (art. 11).

In the light of the recommendations of the Special Rapporteur on the question of torture (A/66/268, para. 88), the Committee urges the State party to place a total ban on solitary confinement of more than 15 days. The State party should also ensure that detention in solitary confinement is used as a measure of last resort, for the shortest possible length of time and under strict judicial oversight and control.

Excessive use of force by law enforcement officials

18. The Committee is concerned at reports alleging excessive use of force by law enforcement officials, with particular reference to the protests against austerity measures in 2011 and 2012. It is also concerned at information received on abuses carried out against immigrants by border officials in the autonomous cities of Ceuta and Melilla. In particular, the Committee deplores the deaths of at least 14 immigrants trying to swim to the beach at El Tarajal, Ceuta, on 6 February 2014. According to information at the Committee's disposal, as they were swimming Civil Guard officers fired rubber bullets and smoke devices to try to deter them.

The State party should take effective measures to prevent and put a stop to the disproportionate use of force by law enforcement officials, and ensure that there are clear, binding rules governing the use of force that are fully compatible with the Basic

Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should also ensure the prompt, thorough and impartial investigation of all acts of brutality and excessive use of force by law enforcement personnel and prosecute those who appear to be responsible.

Impunity and absence of effective and thorough investigations

19. The Committee is seriously concerned over reports that the Spanish authorities fail to carry out prompt, effective, impartial and thorough investigations into complaints of torture and ill treatment committed by the State party's security forces, including allegations regarding acts committed during incommunicado detention and excessive use of force by the police. In addition, from information received the authorities make little effort to prosecute alleged offenders. The Committee fears that such practices will foster a culture of impunity among law enforcement officials (arts. 2, 11, 12, 13 and 16). The Committee is particularly concerned about:

(a) The difficulty of identifying the officers responsible, although the Committee notes that the size of the identification numbers worn by the members of police action units has been increased following a recommendation by the Ombudsman. The lack of identification seems often to have hampered investigations, for example in the cases of Angela Jaramillo in 2011 and Consuelo Baudín in 2012, and the bringing of alleged perpetrators of abuse and excessive use of force to trial;

(b) Reports of difficulties in obtaining medical treatment in police custody and shortcomings in the quality and accuracy of forensic examinations;

(c) The lack of effective guarantees to protect the complainant against any ill treatment or intimidation arising from the complaint;

(d) The fact that, according to information received, accused persons seem to be given light sentences not commensurate with the seriousness of the offence, or are granted pardons such as those given in 2012 to three members of the Mossos d' Esquadra who had been convicted of torture;

(e) The scarcity of disaggregated and comprehensive data on complaints, investigations, prosecutions, trials and convictions in respect of torture, ill treatment and unlawful use of force by the police and on the penalties handed down in such cases, despite the introduction of the National Human Rights Plan program, which came into operation in 2010.

The Committee urges the State party to combat impunity by having an independent mechanism carry out prompt, impartial and thorough investigations into all allegations of torture and ill treatment by law enforcement officials. In particular, it recommends that the State party:

(a) Ensure that law enforcement officers can be properly identified at all times when performing duties for the maintenance of law and order;

(b) Take all necessary measures to guarantee that all detainees are given thorough and impartial medical examinations and that forensic examinations are accurate and of a high standard, and that victims are able to obtain medical evidence to support their allegations;

(c) Ensure that in practice persons who have reported cases of torture and ill treatment are protected from retaliation;

(d) Ensure the prosecution and punishment of perpetrators with penalties that take into account the grave nature of the crimes, and that the legal order forbid

the granting of pardons to persons found guilty of the offence of torture, which constitutes a violation of the Convention;

(e) Gather statistical data, disaggregated by sex, ethnicity or nationality, age and geographical area, on complaints concerning torture, ill treatment and unlawful use of force on the part of the police, and on the related investigations, prosecutions, trials (specifying the offence), and criminal or disciplinary sanctions.

Reparation and rehabilitation for victims of torture

20. While it welcomes the adoption of the law on the status of victims of crime, which comprehensively catalogues the rights, procedural and otherwise, of all victims of crime, the Committee is concerned at the difficulties victims face in obtaining reparation and adequate compensation, owing to a lack of proper investigation of torture and ill treatment. The Committee also finds it regrettable that there is no statistical data or examples of cases in which victims have received reparation, including compensation and rehabilitation (art. 14).

The State party should step up its efforts to guarantee that victims of torture and ill treatment obtain fair and adequate compensation, and as full rehabilitation as possible. In addition, the State party should collect data and in its next periodic report give information on cases and on the type of compensation and rehabilitation provided.

Violence against women

21. Though it appreciates the steps taken by the State party to comprehensively address the various forms of violence against women, as established in the 2013–2016 National Strategy for the Eradication of Violence against Women and through the comprehensive forensic assessment units, the Committee is concerned about the persistence of violence of this kind, because in some cases it ends in the murder of the victim, and because, according to information received, there are often obstacles in the way of lodging complaints, accessing the necessary protection measures and obtaining reparation for the victims (arts. 2 and 16).

The Committee urges the State party to step up its efforts to prevent, combat and punish violence against women, to continue with its awareness-raising campaigns and to provide training programmes for officials on this issue. The State party should also take measures to make it easier for victims to bring complaints, inform victims about the resources available and ensure that all allegations of violence against women are investigated promptly, impartially and effectively and that victims have effective access to protection and compensation. The State party should also allocate sufficient financial resources to ensure that comprehensive support services to women victims of gender violence operate effectively notwithstanding the economic crisis.

Undocumented migrant women

22. The Committee welcomes the amendment to Organic Act No. 4/2000 on rights and freedoms of foreigners in Spain and their social integration, by Organic Act No. 10/2011 of 27 July, which aims to encourage foreign women to bring complaints concerning acts constituting gender violence. However, the Committee is concerned that undocumented migrant women can avoid proceedings being taken against them for irregular residence only if they can prove their status as victim in court, and that may discourage them from filing complaints of gender violence for fear of being deported from the territory of the State party (arts. 2, 13 and 16).

The State party should revise the laws relating to migrant women in an irregular situation, so as to ensure the protection of migrant women victims of gender violence from proceedings being taken against them for irregular residence or the reopening of a case already under way but suspended on receipt of a complaint by them of gender violence.

Training of law enforcement and medical personnel

23. The Committee takes note of the entry-level and in-service human rights training programmes offered to the national police and the Civil Guard. However, it is concerned at reports that insufficient emphasis is placed on the prohibition of torture and the legitimate use of force in law-enforcement training programmes. It is also concerned that, according to information received, training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is not provided to all medical professionals dealing with persons deprived of liberty. The Committee also finds it regrettable that there is no information on the evaluation of the impact of training programmes in reducing the number of cases of torture and ill treatment (art. 10).

The State party should continue to strengthen and expand its training programmes to ensure that all public officials, including law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention and the absolute prohibition of torture. These officials should receive specific training on how to detect signs of torture and ill treatment and on using police and riot equipment and force in an appropriate manner and only on an exceptional and proportionate basis. The Committee also recommends that the Istanbul Protocol be incorporated into the training of doctors. In addition, the State party should develop and implement a methodology to evaluate the effectiveness of such training programmes and inform the Committee of the results.

Follow-up procedure

24. The Committee requests the State party to provide it with information by 15 May 2016 at the latest, on the action it has taken in response to the recommendations regarding: (a) incommunicado detention and fundamental legal safeguards; (b) temporary migrant holding centres; (c) solitary confinement; and (d) excessive use of force by law enforcement officials. These recommendations are set forth in paragraphs 10, 16, 17 and 18, respectively, of this document.

Other issues

25. The Committee invites the State party to consider ratifying other United Nations human rights treaties to which it is not yet a party, and specifically the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

26. The State party is requested to disseminate widely the report it submitted to the Committee and the Committee's concluding observations on that report, in appropriate languages, through official websites, the media and non-governmental organizations.

27. The Committee invites the State party to submit its next periodic report, which will be its seventh, by 15 May 2019. To that end, the Committee will in due course submit to the State party a list of issues prior to reporting, in view of the fact that the State party has agreed to report to the Committee under the optional reporting procedure.